

**IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA  
CIVIL DIVISION**

ACRES CAPITAL, LLC, a New York limited  
liability company as Administrative Agent,

Plaintiffs,

v.

CASE NO.: 11-2018-CA-003571-0001-XX

THE BAY CLUB OF NAPLES, LLC, a Florida  
limited liability company, THE BAY CLUB OF  
NAPLES II, LLC, a Florida limited liability  
company, MYLES ALPERT, individually,  
HARRY ZEA as Trustee of the Rohar Trust, dated  
July 21, 2011, THE OLD COVE  
CONDOMINIUM OF NAPLES, INC., a Florida  
not-for-profit corporation, THE BAY CLUB AT  
OLD NAPLES CONOMINIUM ASSOCIATION,  
INC., a Florida not-for-profit corporation,  
CROWTHER ROOFING & SHEET METAL OF  
FLORIDA, INC. a/k/a CROWTHER ROOFING  
AND SHEET METAL OF FLORIDA, INC., a  
Florida corporation, PINNACLE PROJECT  
MANAGEMENT, INC., a Florida corporation,  
THE ROCK CUSTOM HOMES, INC., a Florida  
corporation, LOURO CAPITAL LENDING LLC,  
a New York limited liability company, JOHN  
FRANCO, individually, STEVEN LOURO,  
individually, EVELYN L. WALDRON,  
individually, FRANK MEAK, individually,  
LINDA MEAK, individually, JOHN DOE and  
JANE DOE,

Defendants.

/

**NOTICE OF APPEAL**

Defendants The Bay Club of Naples, LLC and The Bay Club of Naples II, LLC appeal to  
the Second District Court of Appeal the following: (1) Order Approving Settlement Agreement  
(Dkt. 112), attached hereto as Exhibit "1"; (2) Order denying Motion for Relief from Order

LAW OFFICES  
BECKER & POLIAKOFF  
1 EAST BROWARD BLVD. • SUITE 1800 • FT. LAUDERDALE, FL 33301  
TELEPHONE (954) 987-7550

Approving Settlement Agreement and Order Appointing Receiver (Dkt. 201 at 22-23), attached hereto as Exhibit “2”; (3) Amended Final Judgment of Foreclosure on Counts I and II as to All Defendants and Amended Stipulated Final Judgment of Mortgage Foreclosure, Damages on Note and Guaranty (Dkt.268), attached hereto as Exhibit “3”; and (4) Order Denying Defendants’ Motion for Rehearing and/or Reconsideration of Entry of April 7, 2020 Final Judgment of Foreclosure on Counts I and II as to All Defendants and Amended Stipulated Final Judgment of Mortgage Foreclosure, Damages on Note and Guaranty (Dkt. 272), attached hereto as Exhibit “4”.

Respectfully submitted,

BECKER & POLIAKOFF, P.A.

*Attorneys for Defendants The Bay Club of  
Naples, LLC and The Bay Club of Naples II,  
LLC*

1 East Broward Blvd., Suite 1800

Ft. Lauderdale, FL 33301

Telephone: (954) 987-7550

Facsimile: (954) 985-4176

JPolenberg@beckerlawyers.com

TFritz@beckerlawyers.com

dgoldman@beckerlawyers.com

nsantiago@beckerlawyers.com



By: \_\_\_\_\_

Jon Polenberg, Esq.

Florida Bar No. 653306

Darren Goldman, Esq.

Florida Bar. No. 88638

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 29, 2020, I electronically filed the foregoing document with the Clerk of the Court using E-Filing Portal, which will automatically send a notice of electronic filing *via email* to: Alice R. Huneycutt, Esq. and John N. Muratides, Esq., STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A., 401 East Jackson Street, Suite 2200, Tampa, FL 33602 ([ahuneycutt@stearnsweaver.com](mailto:ahuneycutt@stearnsweaver.com), [mkish@stearnsweaver.com](mailto:mkish@stearnsweaver.com), [jmuratides@stearnsweaver.com](mailto:jmuratides@stearnsweaver.com), [lwade@stearnsweaver.com](mailto:lwade@stearnsweaver.com)); Joshua A. Hajek, Esq., COHEN & GRIGSBY, P.C. ([jhajek@cohenlaw.com](mailto:jhajek@cohenlaw.com), [ssheldon@cohenlaw.com](mailto:ssheldon@cohenlaw.com)); Ian T. Holmes, Esq. and Jason A. Shepelrich, Esq., HOLMES FRASER, P.A., 711 5<sup>th</sup> Avenue South, Suite 200, Naples, FL 34102 ([iholmes@holmesfraser.com](mailto:iholmes@holmesfraser.com), [service@holmesfraser.com](mailto:service@holmesfraser.com)); Mark D. Holdreth, Esq., SHUMAKER, LOOP & KENDRICK, LLP, 240 S. Pineapple Ave., 10<sup>th</sup> Floor, Sarasota, Florida 34236; and via U.S. Mail to John Franco, 10 Hawk Drive, Lloyd Harbor, NY 11743, Evelyn L. Waldron, 1136 Dormie Drive, Naples, FL 34108; Frank Meak, 7631 Palmer Court, Naples, FL 34113; Linda Meak, 7631 Palmer Court, Naples, FL 34113.

/s/ Jon Polenberg

Jon Polenberg, Esq.

Florida Bar No. 653306

JUN 13 2019  
Exhibit "F"  
1 of 3

## SERVICE LIST

Gregory N. Woods, Esquire  
Woods, Weidenmiller, Michetti & Rudnick, LLP  
9045 Strada Stell Court, Suite 400  
Naples, Florida 34109

*Counsel for Defendants The Bay Club of Naples, LLC;  
The Bay Club of Naples II, LLC; Myles Alpert, individually;  
Harry Zea, as Trustee of the Rohar Trust dated July 12, 2011;  
and Pinnacle Project Management, Inc.*

[gwoods@lawfirmnaples.com](mailto:gwoods@lawfirmnaples.com)  
[dboyd@lawfirmnaples.com](mailto:dboyd@lawfirmnaples.com)  
[mdipalma@lawfirmnaples.com](mailto:mdipalma@lawfirmnaples.com)  
[service@lawfirmnaples.com](mailto:service@lawfirmnaples.com)

Ian T. Holmes, Esquire  
Jason A. Shepelrich, Esquire  
Holmes Fraser, P.A.  
711 5<sup>th</sup> Avenue South, Suite 200  
Naples, Florida 34102

*Counsel for Defendant The Rock Custom Homes, Inc.,  
Steven Louro, and Louro Capital Lending LLC*

[iholmes@holmesfraser.com](mailto:iholmes@holmesfraser.com)  
[jshepelrich@holmesfraser.com](mailto:jshepelrich@holmesfraser.com)  
[service@holmesfraser.com](mailto:service@holmesfraser.com)

Joshua A. Hajek, Esquire  
Cohen & Grigsby, P.C.  
9110 Strada Place, Suite 6200  
Naples, Florida 34108

*Counsel for Defendant The Old Cove Condominium of Naples, Inc.*

[jhajek@cohenlaw.com](mailto:jhajek@cohenlaw.com)  
[ssheldon@cohenlaw.com](mailto:ssheldon@cohenlaw.com)

the loan documents, including the mortgage and including those additional sums due pursuant to the collection on the promissory notes and guaranties.

DONE AND ORDERED in Collier County, Florida this 13 day of July,  
2019.

  
CIRCUIT COURT JUDGE

Copies furnished to:

Alice R. Huneycutt, Esquire, Stearns Weaver Miller Weissler, Alhadeff & Sitterson, P.A.  
Post Office Box 3299, Tampa, FL 33601, Attorneys for Plaintiff,  
[ahuneycutt@stearnsweaver.com](mailto:ahuneycutt@stearnsweaver.com), [mkish@stearnsweaver.com](mailto:mkish@stearnsweaver.com)

Soneet R. Kapila, 1000 South Federal Highway, Suite 200, Fort Lauderdale, Florida 33316,  
[SKapila@kapilamukamal.com](mailto:SKapila@kapilamukamal.com)

See Attached Service List

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IN THE 20TH JUDICIAL CIRCUIT COURT  
IN AND FOR COLLIER COUNTY, FLORIDA  
CIVIL DIVISION

ACRES CAPITAL, LLC,  
Plaintiff,

vs.

CASE NO. 18-CA-3571

THE BAY CLUB OF NAPLES, LLC, et al,  
Defendants.

\_\_\_\_\_/

TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: February 25, 2020

PLACE TAKEN: Collier County Courthouse  
3301 Tamiami Trail East  
Naples, Florida 34112

BEFORE: HONORABLE ELIZABETH KRIER

REPORTER: Cherie' Nottingham, CSR  
Naples Court Reporting  
239-316-7733

A P P E A R A N C E S

Representing Plaintiff:  
ALICE RUTH HUNEYCUTT, ESQUIRE  
401 E Jackson Street  
Suite 2200  
Tampa, Florida

Representing Bay Club I, Bay Club II, Harry Zea,  
Myles Alpert and Pinnacle Project Management  
DONALD G. PETERSON, ESQUIRE  
3431 Pine Ridge Road  
Suite 101  
Naples, Florida 34109

Representing Bay Club I and Bay Club II  
ERIC D. JACOBS, ESQUIRE  
100 N. Tampa Street  
Suite 2600  
Tampa, Florida 33602

Representing Soneet Kapila  
MARK HILRETH, ESQUIRE  
240 South Pineapple Avenue  
10th Floor  
Sarasota, Florida 34236

\*\*\*\*\*



1 THE COURT: 18-CA-3571.

2 THE BAILIFF: We have a court reporter for  
3 this one, Judge.

4 THE COURT: Okay.

5 All right, everybody want to tell me who  
6 you are?

7 MR. PETERSON: Good morning, Your Honor.  
8 Don Peterson, on behalf of Bay Club I; Bay Club  
9 II; Harry Zea as trustee of the Rohar Trust;  
10 Myles Alpert and Pinnacle Project Management.

11 THE COURT: Okay.

12 MR. JACOBS: Good morning, Judge. Eric  
13 Jacobs on behalf of Bay Club I and Bay Club II,  
14 as retained by the current manager of those  
15 entities as appointed by the settlement  
16 agreement.

17 THE COURT: Okay.

18 MR. HILDRETH: Mark Hildreth, Your Honor,  
19 representing Soneet Kapila as court-appointed  
20 receiver.

21 MS. HUNEYCUTT: Alice Huneycutt, here on  
22 behalf of Acres Capital, plaintiff.

23 THE COURT: Okay. The reason -- I very  
24 rarely set motions for rehearing for a hearing,  
25 but the reason I did was that I had received a

1 motion, I think it was a motion, to enforce a  
2 settlement agreement, and, you know, usually  
3 when I receive those things and there's been a  
4 settlement agreement and everyone agrees that a  
5 final judgment can be entered upon default,  
6 upon affidavit, great, okay, sign it.

7 But it appears that there's not agreement  
8 as to the default. So I set this for a  
9 rehearing to determine am I going to set aside  
10 the judgment that I entered and then how are we  
11 going to be proceeding and what's going on.

12 Who wants to talk first?

13 MR. PETERSON: If I may, Your Honor?

14 THE COURT: Yes.

15 MR. PETERSON: I filed a motion,  
16 obviously, seeking rehearing. We are seeking  
17 relief from the final judgment of foreclosure  
18 on the basis that the settlement agreement was  
19 never put into effect.

20 Number two: If you were to find it was in  
21 effect, Acres Capital breached that agreement,  
22 such as they're not entitled to a foreclosure  
23 at this point in time under paragraph 20 of  
24 that settlement agreement.

25 THE COURT: Uh-huh. Okay. Anybody else

1 want to say anything?

2 MS. HUNEYCUTT: Yes, Your Honor. I'm  
3 Alice Huneycutt on behalf of Acres Capital.

4 The motion for rehearing is not well  
5 founded at all. First of all, one of the  
6 theories that they advance, as Mr. Peterson  
7 just says, they claim that the settlement  
8 agreement that consented to the final judgment,  
9 the form of the final judgment, consented to  
10 the appointment of Soneet Kapila as the  
11 receiver with total control of the project,  
12 including whether they filed bankruptcy or not.  
13 And the settlement agreement, that attached the  
14 stipulation approval of settlement agreement  
15 and attached the order. And their theory in  
16 their motion that they advanced, the settlement  
17 agreement does not affect it, and thus the  
18 final judgment, they claim, is based on the  
19 fact that there was a provision in paragraph A  
20 of the settlement agreement that required that  
21 an order be entered by this Court for approval  
22 of the settlement agreement so that everyone  
23 was on notice of what would happen, including  
24 the default final judgment.

25 Their theory is that because Acres

1 included language in there that basically  
2 wanted to have the borrowers here be sworn in  
3 to testify to this court so that there be no  
4 shenanigans, like we have right now, that they  
5 now somehow can invalidate the settlement  
6 agreement that was approved by this Court on  
7 June the 13th when Greg Woods, their attorney,  
8 was --

9 THE COURT: June 13th of what?

10 MS. HUNEYCUTT: 2019.

11 THE COURT: Because there's a set- -- the  
12 settlement agreement that I have in the file  
13 was filed on January 28th, 2020. Is that the  
14 one we're talking about?

15 MS. HUNEYCUTT: The settlement agreement,  
16 when we -- I have a transcript here, if the  
17 Court would like to take a look at it, of when  
18 we came before the Court for approval of  
19 settlement agreement.

20 THE COURT: Okay.

21 MS. HUNEYCUTT: Borrowers desire that the  
22 settlement agreement not be public. It was  
23 never confidential.

24 THE COURT: Okay. So you're talking about  
25 the order approving the settlement agreement?

1 MS. HUNEYCUTT: On June 13th.

2 THE COURT: I got it.

3 MS. HUNEYCUTT: So we appeared before --

4 THE COURT: So then what's filed on  
5 February 20th? Is that the agreement?

6 MS. HUNEYCUTT: February the 20th is when  
7 we actually filed the settlement agreement,  
8 because we were seeking to have it enforced.

9 THE COURT: Okay.

10 MS. HUNEYCUTT: And that was the express  
11 terms of the settlement agreement --

12 THE COURT: Okay.

13 MS. HUNEYCUTT: -- that when we came to  
14 enforce it, we could file it.

15 THE COURT: I got it.

16 MS. HUNEYCUTT: So what happens, we come  
17 to the Court on June the 13th. The borrowers  
18 don't show up. And I raised that with the  
19 Court, my concern that they were supposed to  
20 have been there. And at that time the Court  
21 went through with me how that Greg Woods, who  
22 was there on behalf of all of them, and he had  
23 signed the stipulation for approval, and we  
24 went through and I showed you in that hearing  
25 how the borrower to guarantors had agreed to

1 the form of the settlement, the stipulation for  
2 settlement and the order. And at that time the  
3 Court basically became satisfied that they were  
4 well represented by Greg Wood (sic); Greg Wood  
5 was their attorney for all of them. He  
6 consented to all of these and the order was  
7 entered.

8 Most noteworthy is that at no time from  
9 June 13th -- Mr. Woods didn't object to his  
10 clients not being there because they just  
11 didn't come to court, which would be terrible  
12 to reward them for their bad behavior.

13 THE COURT: Speak slower.

14 MS. HUNEYCUTT: But at any rate, at no  
15 time between June 13, 2019 until they filed  
16 this motion has this ever been an issue that  
17 their clients weren't present.

18 We have filed two declarations; one  
19 (inaudible) One, and one of myself with the  
20 Court. I have copies of it here. Which  
21 basically dubbed the fact that no one has ever  
22 questioned it. And moreover, that there had  
23 been some clear understandings about this was  
24 negotiated, that settlement agreement was  
25 negotiated over -- excuse me, my mouth's dry --

1       there were 16 weeks, and during that time  
2       period extensive negotiations. This was one in  
3       which the borrowers and guarantors had four  
4       separate attorneys who were actually  
5       representing them. There's absolutely no  
6       question whatsoever that they knew what was  
7       transpiring and they knew the consequences.

8               As a matter of fact, in the transcript of  
9       the proceeding -- in the transcript of the  
10      proceeding, I basically pointed out to the  
11      Court because it was such a high risk  
12      transaction, that it was necessary to have the  
13      default provision in there. So I don't think  
14      there's any question whatsoever -- thank you --  
15      as to the validity of the settlement agreement  
16      and the fact that if they were --

17             THE COURT: It was signed.

18             MS. HUNEYCUTT: It's signed. As a matter  
19      of fact, Mr. Zea, who's behind this motion that  
20      was filed with this Court today, signed 25  
21      different times in varying capacities --

22             THE COURT: I'm seeing that.

23             MS. HUNEYCUTT: -- on these settlement  
24      documents. And it's outrageous that they're  
25      coming before the Court now in advance. That

1 was one of their theories.

2 And as a result, this motion for  
3 rehearing -- because the settlement agreement  
4 was valid, this motion for rehearing is totally  
5 inappropriate.

6 In paragraph 21 of the settlement  
7 agreement, there was an express waiver of  
8 rehearing and appeal. And the courts  
9 repeatedly have found that it is perfectly  
10 legitimate for parties to be able to waive  
11 those types of rights in advance.

12 The language reads, 21: Finality of  
13 judgment. Borrowers and guarantors hereby  
14 consent to the finality of the final judgment  
15 when entered in the litigation.

16 THE COURT: What paragraph.

17 MS. HUNEYCUTT: Paragraph 21.

18 THE COURT: I've got it.

19 MS. HUNEYCUTT: Paragraph 21. And waive  
20 any right to seek a rehearing or appeal of the  
21 final judgment.

22 So clearly they can't basically say our  
23 guys didn't show up, so it's not effective,  
24 after they've taken the benefit. All through  
25 bankruptcy they've claimed to have the benefit



1 of this particular agreement.

2 So here we are. The second thing that  
3 they tried to argue -- and they claimed there's  
4 no due process that was provided to them.  
5 Obviously the U.S. Supreme Court has covenants,  
6 confessions of judgment, has held, dating way  
7 back to 1917, that -- excuse me, not 1917,  
8 1972 -- that these are perfectly legitimate.  
9 And it's legitimate when sophisticated parties  
10 in an arm's-length transaction negotiate. We  
11 had -- we revised the settlement agreement 18  
12 times before we reached an execution copy.  
13 That's in my declaration. We had five more  
14 revisions after we sent out the execution copy.  
15 It was extensively negotiated.

16 So in this particular instance clearly  
17 they have full knowledge of what they were  
18 surrendering.

19 The second point -- and by the way, the  
20 settlement agreement was very clear that Mr.  
21 Zea could not be involved in this project  
22 whatsoever. As a matter of fact, that's one of  
23 the primary non-curable defaults, that he went  
24 ahead and he filed bankruptcy on his own, even  
25 though this Court had entered an order

1 directing that only Mr. Kapila, the receiver  
2 and CRO, had that authority.

3 Mr. Zea also, when an involuntary was  
4 filed, didn't get it dismissed within 60 days.  
5 And all those are part of the defaults that are  
6 non-curable because of the actions of Mr. Zea.

7 But the fundamental thing is, is that  
8 candidly the appearance that was made by  
9 Mr. Peterson in this lawsuit when we -- Mr.  
10 Woods was permitted a withdrawal, he only made  
11 an appearance on behalf of the defendants, but  
12 not Bay Club I or Bay Club II, which are  
13 represented by the other attorneys here today.  
14 So there was no authority by Mr. Kapila to  
15 permit the filing of this rehearing, because it  
16 was surrendered.

17 The second point they raise in their  
18 motion, is that they claim that there was a  
19 fraud by Acres because Acres had a meeting with  
20 two of their creditors -- and as it turns out  
21 two of their investors in our project -- in  
22 which a five-minute meeting that took place a  
23 couple days after the settlement was approved,  
24 and the basis for the -- in the motion of why a  
25 claim that we breached it is because of that

1           one meeting. I would --

2           THE COURT: Is because of what?

3           MS. HUNEYCUTT: Because of the meeting  
4           that occurred between Acres and Mr. Louro and  
5           Mr. Meak.

6           The only information they put forth in  
7           that particular motion happens to be from the  
8           Meak and Louro depositions, which I would note  
9           we don't waiver our right to object to it.  
10          Those were taken in the bankruptcy court; these  
11          issues weren't present.

12          But what is very germane is that they  
13          tried to advance this theory that -- they tried  
14          to advance the theory that the releases were  
15          not delivered in the settlement agreement  
16          because we interfered.

17          The testimony of Mr. Meak is very clear:  
18          They've put all of the -- made all of the  
19          references -- I want to hand to the Court a  
20          portion -- I actually have several.

21          THE COURT: First of all, I just need to  
22          point out to you guys, this was set on my  
23          order.

24          MS. HUNEYCUTT: Yes, Your Honor.

25          THE COURT: So, I mean, I have no -- I

1 think we might have asked you guys how much  
2 time you needed, but I have no idea. But I  
3 don't have unlimited amounts of time for you  
4 all.

5 Number two: This is not set as an  
6 evidentiary proceeding --

7 MS. HUNEYCUTT: Yes, Your Honor.

8 THE COURT: -- so I can listen to  
9 everything, but I can't do anything --

10 MS. HUNEYCUTT: The point of putting these  
11 out here is that the -- there's an obligation  
12 of (inaudible) covental non-information  
13 rehearing, if you claim that there's fraud,  
14 which is what they've argued (inaudible.)

15 And the standard for that mandates that  
16 they plea fraud with specificity. And that  
17 they -- if I can hand these cases to the Court.

18 THE COURT: I know what the statute -- the  
19 case law is on fraud.

20 MS. HUNEYCUTT: But it basically says to  
21 have a motion reheard based on fraud, they have  
22 to plead it with specificity. And the second  
23 requirement that they have is that they have to  
24 establish how that fraud would change the  
25 judgment. And that's the Townsend case and

1           also --

2           THE COURT: Did you cite that in your --  
3           or did you --

4           MS. HUNEYCUTT: I didn't file --

5           THE COURT: Did you file a response?

6           MS. HUNEYCUTT: I did not, Your Honor.  
7           There wasn't applicable time for us to do that.  
8           But I can give these two cases to the Court.

9           THE COURT: Sure, that's fine.

10          MS. HUNEYCUTT: Because I think what they  
11          show is that we shouldn't have an evidentiary  
12          hearing. It should just be denied because they  
13          didn't plea the requirements of it.

14          THE COURT: Okay. Anything else?

15          MS. HUNEYCUTT: No, Your Honor. Just to  
16          point out on the page that's turned back to on  
17          the Flemenbaum. In that particular case, the  
18          Court determined it wasn't accurately pled, and  
19          it says there on the Flemenbaum case, I turn it  
20          back to that page: Because the husband was  
21          facially deficient, he was not entitled to an  
22          evidentiary hearing. And it goes on to say  
23          that: The court may relieve a party from a  
24          final judgment of fraud, but you have to -- the  
25          circumstances constituting the fraud be stated

1 with particularity, clear and concise, central  
2 facts of fraud. And in that particular case,  
3 it went on to say at the top of the page: In  
4 many cases the term fraud is loosely used to  
5 label conduct which has displeased of a part  
6 (sic). Requiring Rule 1.540, fraud, to be  
7 stated with particularity allows a trial court  
8 to determine whether the movant has made a  
9 prima facie showing. So unless they make a  
10 prima facie showing by adequate allegations of  
11 fraud, the motion should be denied.

12 So there are multiple reasons, Your Honor,  
13 that they have not met the burden for a motion  
14 for rehearing. Certainly they can't say that  
15 the settlement agreement is not effective.

16 And secondly, to basically say that Acres  
17 had a meeting for five minutes about selling  
18 the note, where the testimony of Meak's  
19 deposition says to the contrary; he says the  
20 reason they didn't deliver releases was because  
21 Zea didn't make arrangements to pay them.

22 He also says clearly, well, the reason  
23 they filed involuntary is because Zea didn't  
24 make arrangements to pay Louro and Meak. There  
25 is absolutely nothing presented in their motion

1 that should port a second evidentiary hearing  
2 in this, and we would ask the Court to deny the  
3 motion for rehearing.

4 THE COURT: Okay. Mr. Peterson?

5 MR. PETERSON: Thank you, Your Honor.

6 The issue -- the standard under 1.530 is  
7 very broad; allows the Court to decide the  
8 issue on the merits, the issue of fraud not  
9 withstanding.

10 What we identified for you in the motion  
11 was the fact that --

12 THE COURT: And let's be clear which  
13 motion we're talking about, because there's  
14 about 85 gazillion things in my court files  
15 designated as a motion for rehearing.

16 I'm looking at the one that was filed on  
17 February 13th, 2020?

18 MR. PETERSON: Yes, that's the motion for  
19 rehearing under 1.530, which we're here on  
20 today, Your Honor. There was another motion  
21 filed under 1.540 which was not set for hearing  
22 by the Court. That was a motion for rehearing  
23 under a different standard.

24 THE COURT: Well, it probably was because  
25 they both looked alike to me so we probably

1 thought we were alike and so we probably  
2 thought they were both set. So let's not waste  
3 my time. Okay, go ahead.

4 MR. PETERSON: Fair enough, Your Honor.

5 The purpose of the motion here, as we  
6 stated in there, was the settlement agreement,  
7 number one, had a specific provision within  
8 there that said come to court, be examined by  
9 the Court, you know, to determine --

10 THE COURT: Yeah, but you guys didn't  
11 show -- they didn't show up.

12 MR. PETERSON: And my understanding was at  
13 that time that wasn't properly set. That was a  
14 --

15 THE COURT: It was properly set. It was  
16 on my docket. It was properly set. They just  
17 chose to not show up.

18 MR. PETERSON: That's not true.

19 THE COURT: Okay. Sh. This is not the  
20 Jerry Springer Show. You have an attorney.

21 Go ahead.

22 MR. PETERSON: Thank you, Your Honor.

23 I was informed by Mr. Woods, who was prior  
24 counsel, that was here on that day.

25 THE COURT: I was here.



1 MR. PETERSON: Okay.

2 THE COURT: I remember this, so...

3 MR. PETERSON: I understand, Your Honor,  
4 okay.

5 THE COURT: Yeah.

6 MR. PETERSON: They were not available.  
7 They didn't come --

8 THE COURT: Well, you don't just not show  
9 up for court.

10 MR. PETERSON: I understand, Your Honor.  
11 And I'm not going to make a big issue out of  
12 that. Because really the bigger issue here --

13 THE COURT: Well, the bigger issue is that  
14 you put something in your motion that is not  
15 true. You, a lawyer, put something in a motion  
16 that's not true. Okay, they had an opportunity  
17 to appear, they failed to appear. So, I mean,  
18 that's the first part that is troubling to me.

19 Now, the second part is, is what exactly  
20 are the bases of your motions that I should set  
21 this aside? Because it's not clear to me.

22 MR. PETERSON: The fact that Acres Capital  
23 breached the terms of the settlement agreement  
24 before we even got to any issue of a supposed  
25 default committed by any of the defendants.

1           As you heard, days after the settlement  
2 agreement was approved by the Court, there was  
3 a meeting between Acres Capital and two parties  
4 that are defendants in the action but are not  
5 parties of the settlement agreement, Frank Meak  
6 and Steven Louro. The discussion there was  
7 whether or not Acres Capital would determine if  
8 they were going to try to sell the note and the  
9 paperwork to them.

10           Mr. Louro indicated that he was not  
11 interested in purchasing at their price. Mr.  
12 Malone responded: If you understood the  
13 mechanics of this agreement, the stipulation of  
14 foreclosure, how it works, you would 100  
15 percent go ahead and file this note.

16           What he's referring to is the fact that if  
17 Meak and Louro did not provide their releases  
18 to Mr. Zea, they could say there's a default in  
19 this agreement, you can go ahead and take it,  
20 foreclose on it, property's yours, go build it,  
21 take all the equity, have at it. That was the  
22 issue.

23           The purpose of the settlement agreement  
24 was to liquidate the damages to appoint  
25 Mr. Kapila as --

1 THE COURT: There was a number of purposes  
2 of the settlement agreement. I mean, there  
3 wasn't just one purpose. There's a number of  
4 issues that are addressed in the settlement  
5 agreement.

6 MR. PETERSON: I had three, Your Honor.

7 THE COURT: Yeah.

8 MR. PETERSON: Liquidate the damages;  
9 appoint Mr. Kapila, and provide a basis for  
10 funding to complete the construction.

11 They were interfering with the basis to  
12 get that funding to complete the construction.  
13 That was never done. This was all discovered  
14 by Mr. Battista in an involuntary proceeding  
15 that was initiated by Meak and Louro on July  
16 26th when there was still a window of time for  
17 Mr. Zea to go ahead and obtain his releases and  
18 deliver them, pursuant to the agreement. They  
19 initiated a Chapter 7 involuntary proceeding.

20 In Mr. Battista's defense of that  
21 proceeding, he discovered what was going on  
22 between Meak, Louro and Acres Capital. This  
23 was all presented to Judge Delano in the  
24 hearing to dismiss that action. She was quite  
25 troubled by the fact of what she saw was going

1 on and even commented: This is going to go  
2 wind up going back down in front of Judge  
3 Krier, who's going to have to take a look at  
4 this, and if she says oh, my gosh, this is  
5 terrible, you set aside the order on the motion  
6 to approve the settlement, it's going to wind  
7 back up in front of her to address this.

8 THE COURT: Well, this is not a motion for  
9 rehearing on approving the settlement.

10 MR. PETERSON: Correct, Your Honor.

11 THE COURT: This is a motion for rehearing  
12 on --

13 MR. PETERSON: Correct.

14 THE COURT: -- setting aside the judgment.

15 MR. PETERSON: Correct.

16 THE COURT: The settlement's done.

17 MR. PETERSON: Correct.

18 THE COURT: Approving the settlement's  
19 done.

20 MR. PETERSON: There was a motion filed  
21 seeking relief from that order, Your Honor, but  
22 it's not set for hearing today.

23 THE COURT: Well, I'm not considering  
24 that.

25 MR. PETERSON: I understand, Your Honor.

1 THE COURT: Yeah. That one's denied.

2 This one, in terms of setting aside the  
3 judgment that I entered based on the settlement  
4 agreement, that's what I'm considering.

5 MR. PETERSON: Yes, ma'am.

6 THE COURT: Yeah. Okay.

7 MR. PETERSON: Correct.

8 THE COURT: All right. So given that  
9 there's a number of evidentiary issues that --  
10 I mean, again, both of you guys are talking  
11 about evidentiary issues. I understand that it  
12 should seem obvious to me, but it's not obvious  
13 to me if I don't have actually evidence. And I  
14 strongly suspect that given the number of  
15 issues that you guys raised that -- because the  
16 issue here is, is there a valid and enforceable  
17 agreement? Yes, I adopted the agreement. But  
18 is there a valid and enforceable agreement in  
19 place at the time that I entered the judgment.  
20 If there is, then we're done. But if there  
21 isn't, then we've got something else to think  
22 about.

23 So that's what I need to figure out. And  
24 that's what I need to hear evidence about.

25 So -- and there may be lots of evidence about

1 that. For example, as you say, they may have  
2 relied on that in other proceedings and so on  
3 and so forth, I don't know. But that's what  
4 I'm going to need to hear evidence about.

5 Anything else to contribute? Go ahead.

6 MR. JACOBS: Yes, Judge, Eric Jacobs on  
7 behalf of the Bay Club entities.

8 Pursuant to the settlement agreement that  
9 Your Honor said is still in effect, the Bay  
10 Club is operating by its sole manager and CRO,  
11 Mr. Sonny Kapila, who did not authorize the  
12 filing of a motion we're here on today. So I  
13 think we just have a procedural hurdle we need  
14 to get over as to whether or not the relief you  
15 now want an evidentiary hearing on can proceed  
16 as towards the Bay Club I and the Bay Club II,  
17 as we call them. Because we don't believe  
18 that's been properly filed by the Bay Club  
19 entities.

20 THE COURT: So explain your position  
21 again?

22 MR. JACOBS: Yes, Judge. Pursuant to the  
23 settlement agreement, the Bay Club I and Bay  
24 Club II are under the control of Soneet Kapila  
25 as receiver --

1 THE COURT: Right.

2 MR. JACOBS: -- and sole manager and CRO.

3 THE COURT: Right. Which occurred before  
4 the entry of my final judgment.

5 MR. JACOBS: Correct, Judge.

6 THE COURT: That occurred on the adoption  
7 of the settlement agreement.

8 MR. JACOBS: Correct.

9 THE COURT: Right.

10 MR. JACOBS: The motion that we're here on  
11 today is supposedly filed on behalf of the Bay  
12 Club entities, as well as other parties. But  
13 they were filed by Mr. Zea, who retained  
14 counsel on behalf of the Bay Club.

15 THE COURT: So that's impossible.

16 MR. JACOBS: So that's impossible.  
17 Because the Bay Club, as currently been managed  
18 by Mr. Kapila, did not authorize the filing of  
19 the motion on behalf of those two entities.

20 THE COURT: And you are representing?

21 MR. JACOBS: The Bay Club I and Bay Club  
22 II. We are counsel that was retained by Mr.  
23 Soneet Kapila to represent the Bay Club  
24 entities.

25 THE COURT: I got you, okay.

1 MR. PETERSON: Your Honor, I've had  
2 discussions about this with Mr. Battista,  
3 Mr. Jacob's partner. He was well aware of this  
4 motion being filed and voiced no objection to  
5 that.

6 THE COURT: Okay, but it doesn't matter  
7 whether he objected or not. The whole point  
8 is, is legally you only represent Mr. Zea.  
9 Legally that's -- at this point in time we have  
10 to assu- -- the question is, is was the  
11 agreement valid at the time that I entered the  
12 final judgment. I don't know the answer to  
13 that question. But I'm not here considering  
14 setting aside the order that adopted the final  
15 judgment -- or excuse me, the settlement  
16 agreement. That's done. And if somebody had  
17 an objection to that, that should have happened  
18 a long time ago. So I am not rehearing that.

19 Now the question is, did somebody breach  
20 that agreement after that? Who breached it?  
21 Or who breached it first? Or who -- you know,  
22 I forgotten now the word, what it is. But you  
23 can breach it and then you can un-breach it. I  
24 mean, there's various things that happen to  
25 contracts and agreements. So that's what I



1        need to hear about is the evidence of what  
2        happened in between the time that we had a  
3        valid agreement that I adopted, okay, back in  
4        June, and when I entered the final judgment.  
5        Is there a valid -- was there a valid agreement  
6        at that time? I believe that the receiver was  
7        validly appointed at the time that I adopted  
8        the settlement agreement; therefore, he is the  
9        one that gets to hire you representing the  
10       various projects, okay.

11                Mr. Zea's welcome to have counsel and has  
12        filed a motion on his behalf. That's fine.  
13        And what I'm hearing you say is, is wait a  
14        minute, there may or may not have been --  
15        you're saying there wasn't a valid agreement,  
16        but let's assume there was for a minute. But  
17        it was breached by them first and therefore the  
18        agreement is not valid. Okay, I'm willing to  
19        hear evidence about that. And so that's what  
20        we're going to have to do.

21                Did I sound more confusing than you? I  
22        can't believe that I did.

23                MS. HUNEYCUTT: I just wanted to raise  
24        with the Court that by their own motion they  
25        claim that they learned of this meeting in

1 August 12 --

2 THE COURT: Learned of what meeting?

3 MS. HUNEYCUTT: The meeting with Acres.

4 THE COURT: Okay. But again, I'm not  
5 taking evidence.

6 MS. HUNEYCUTT: No, I'm pointing out the  
7 unlikelihood of the validity of this breach,  
8 because they have known about this since  
9 August.

10 THE COURT: Again, there is a consequence  
11 of raising issues that are not actually  
12 justiciable, and it's called 57.105 --

13 MS. HUNEYCUTT: Yes, Your Honor.

14 THE COURT: And that applies to everybody.  
15 Not just them but also, you know, everybody.  
16 And you can raise that issue to me and I am not  
17 afraid of being reversed by awarding those  
18 fees.

19 MS. HUNEYCUTT: Thank you, Your Honor.

20 THE COURT: So, however, you know, if  
21 there's a legal basis to do so. But that's  
22 your consequence, not arguing --

23 MS. HUNEYCUTT: Yes, Your Honor.

24 THE COURT: -- stuff to me that I can't do  
25 anything about, so...

1 MS. HUNEYCUTT: We currently have a  
2 summary judgment hearing scheduled for April  
3 the 7th as relates to the junior lienors. And  
4 we would just ask if at all possible that if  
5 the Court's --

6 THE COURT: What's the date?

7 MS. HUNEYCUTT: April the 7th.

8 THE COURT: You know, I can't guarantee  
9 you time. I have a fairly heavy trial docket  
10 in the month of March. So this is going to  
11 take a while. How long do you think it's going  
12 to take to present the evidence that you need  
13 to present?

14 MS. HUNEYCUTT: I don't think we need more  
15 than three hours.

16 THE COURT: Well, remember, it's their mo-  
17 -- they've got the burden of proof, so...

18 MR. PETERSON: Probably half a day, Your  
19 Honor.

20 THE COURT: Yeah. So three hours. Now,  
21 are you thinking three hours for you or three  
22 hours for everybody?

23 MS. HUNEYCUTT: Oh, no, no, I think for  
24 everyone.

25 THE COURT: Maybe four hours?

1 MR. PETERSON: Four hours I think is  
2 sufficient.

3 THE COURT: Four hours? Okay.

4 So somebody -- I will email my secretary  
5 who's also going out on medical leave on  
6 Wednesday, so I'll have coverage, but it  
7 will -- she will not be as experienced at  
8 finding time. 571. Four hours.

9 Now, I know that I had one settle, the  
10 first one in my trial docket, which would be  
11 starting next Wednesday. But I could probably  
12 fit you in Thursday or Monday. Does anybody  
13 have any scheduling issues I should be aware  
14 of?

15 MR. PETERSON: I do, Your Honor. I begin  
16 a four-day trial next Tuesday.

17 THE COURT: Okay. You have a four-day  
18 trial starting Tuesday?

19 MR. PETERSON: Yes. In Fort Lauderdale.

20 THE COURT: So maybe you could do it the  
21 9th, March 9th?

22 (Speaking on phone): Do I have four hours  
23 on March 9th? She's laughing at me. Like  
24 maybe like at 1:00?

25 MR. PETERSON: I have an arbitration that

1 day, Your Honor.

2 THE COURT: Okay. Well, that's all I've  
3 got. I mean, I've got that day and -- I mean,  
4 that I know about. I have that day and then I  
5 have starting -- I could do, you know, March  
6 5th or maybe the 6th. And those are the days  
7 you're in trial.

8 MR. PETERSON: Yes, ma'am.

9 THE COURT: So I don't know, I mean, we  
10 can look, but I just --

11 (Talking on phone): Do we have any other  
12 days where we have four hours, like a half a  
13 day? Right. Well, he's got a four-day trial.  
14 Okay. Well, will you make a note to Melissa  
15 that if we have a case settlement on the March  
16 docket that we'll let these guys know? This is  
17 in Acres Capital, 18CA3571, motion for  
18 rehearing or reconsideration. All right,  
19 thanks. (End of phone conversation.)

20 All right. So if we have a cancellation,  
21 we'll let you guys know, but that's as good as  
22 it's going to get. Otherwise you're probably  
23 looking in May, maybe early April.

24 MR. PETERSON: Understood, Your Honor.

25 THE COURT: So you have four hours. So

1       you may -- I would -- I would not want to do  
2       those motions for summary judgment before we  
3       have this hearing. I think we need to have  
4       this hearing first.

5               How long of a period of time did you ask  
6       for for your motion?

7               MS. HUNEYCUTT: Only a half an hour,  
8       because it only goes to foreclose the interest  
9       of the junior lienors, including the mortgage  
10      of Mr. Louro and Mr. Meak. That's the only  
11      purpose is --

12              THE COURT: Is that like a big issue?

13              MS. HUNEYCUTT: -- the only purpose is to  
14      get rid of these junior lienors, because we  
15      already have judgment against everyone else.

16              THE COURT: Is this a big issue for  
17      anybody?

18              MS. HUNEYCUTT: There is no way they can  
19      claim that it's your dock sheet (phonetic),  
20      Your Honor. So, it's a really  
21      straightforward --

22              THE COURT: We can proceed, that's fine.

23              MS. HUNEYCUTT: Thank you.

24              THE COURT: All right. Okay. Well, you  
25      know, just check in with my office. The woman

1 that is going to be covering for my J.A.'s name  
2 is Melissa. She again covers for a lot of  
3 judges. So send her an email if you have a  
4 problem.

5 MS. HUNEYCUTT: Thank you, Your Honor.

6 THE COURT: Thank you, guys.

7 So I am granting a hearing, Mr. Peterson,  
8 on your motion for rehearing and  
9 reconsideration of the order entering the final  
10 judgment. So you want to get me an order on  
11 that, an evidentiary hearing.

12 MR. PETERSON: Yes, ma'am.

13 THE COURT: All right, thank you.

14 (Hearing concluded at 9:25 a.m.)

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CERTIFICATE OF REPORTER

State of Florida )

County of Collier )

I, CHERIE' R. NOTTINGHAM, Notary Public, in  
and for the State of Florida at Large, certify that  
the transcript is a true record of my stenographic  
notes.

I further certify that I am neither counsel  
for, related to, nor employed by any of the parties  
to the action in which this hearing was taken, and  
further that I am not financially nor otherwise  
interested in the outcome of the action.

Dated this 25th day of February, 2020.

*Cherie' R. Nottingham*

CHERIE' R. NOTTINGHAM, FSR  
My Commission No. GG-236783  
Expiration: July 12, 2022



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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA  
CIVIL DIVISION

ACRES CAPITAL, LLC, a New York limited  
liability company, as Administrative Agent,

Plaintiff,

v.

Case No.: 2018-CA-003571

THE BAY CLUB OF NAPLES, LLC, a Florida  
limited liability company; THE BAY CLUB OF  
NAPLES II, LLC, a Florida limited liability  
company; MYLES ALPERT, individually;  
HARRY ZEA, as Trustee of the Rohar Trust  
dated July 12, 2011; THE OLD COVE  
CONDOMINIUM OF NAPLES, INC., a  
Florida not-for-profit corporation;  
THE BAY CLUB AT OLD NAPLES  
CONDOMINIUM ASSOCIATION, INC.,  
a Florida not-for-profit corporation,  
PINNACLE PROJECT MANAGEMENT, INC.,  
a Florida corporation; THE ROCK CUSTOM  
HOMES, INC., a Florida corporation;  
LOURO CAPITAL LENDING LLC,  
a New York limited liability company;  
JOHN FRANCO, individually;  
STEVEN LOURO, individually;  
EVELYN L. WALDRON, individually;  
FRANK MEAK, individually; and  
LINDA MEAK, individually;

Defendants.

**AMENDED FINAL JUDGMENT OF FORECLOSURE ON COUNTS I AND II AS TO  
ALL DEFENDANTS AND AMENDED STIPULATED FINAL JUDGMENT  
OF MORTGAGE FORECLOSURE, DAMAGES ON NOTE AND GUARANTY**

THIS ACTION came before the Court on April 7, 2020, on Plaintiff's Motion for Summary Final Judgment of Foreclosure on Counts I and II and for Entry of Amended Stipulated Final Judgment. The Court having considered the pleadings, affidavits, and record in this cause, finds that there is no genuine issue of material fact as to the priority of all rights, titles, claims, liens, interests, encumbrances and equities of the Defendants named herein below and that Plaintiff is entitled to summary final judgment as a matter of law. Upon consideration thereof it is hereby,

**ORDERED and ADJUDGED that:**



1. Plaintiff's Motion for Summary Final Judgment of Foreclosure on Counts I and II and for Entry of Amended Stipulated Final Judgment is GRANTED.

2. **Final Judgment of Foreclosure.** Plaintiff is GRANTED a final judgment of foreclosure on Counts I and II of its Amended Complaint against The Bay Club of Naples, LLC; The Bay Club of Naples II, LLC; The Old Cove Condominium of Naples, Inc.; The Bay Club at Old Naples Condominium Association, Inc.; The Rock Custom Homes, Inc.; Louro Capital Lending, LLC; John Franco, individually; Steven Louro, individually; Evelyn L. Waldron, individually; Frank Meak, individually; and Linda Meak, individually.

3. **Amended Stipulated Final Judgment Sum as of January 29, 2020.** Plaintiff, ACRES Capital, LLC, whose address is 865 Merrick Ave., Suite 200S, Westbury, New York 11590, Attn.: Guy R. Milone, Jr., is due from Defendants The Bay Club of Naples, LLC and The Bay Club of Naples II, LLC, as follows:

Amended and Restated Mortgage Note

Principal	\$ 19,931,783.71
Default Interest from 7/03/18 through 1/27/20 at 24% per annum (573 days x \$13,287.86 per diem) and \$13,287.86 per diem thereafter	\$ 7,613,943.78

Receiver's First Lien Certificates of Indebtedness:

Certificate No. 1

Principal	\$ 50,000.00
Interest at 30-day LIBOR rate plus 10.5% per annum (6/28/19 through 1/27/20; and \$17.19 per diem thereafter)	\$ 3,771.40

Certificate No. 2

Principal	\$ 133,107.00
Interest at 30-day LIBOR rate plus 10.5% per annum (9/18/19 through 1/27/20; and \$45.76 per diem thereafter)	\$ 6,114.23

Certificate No. 3

Principal	\$ 52,415.00
Interest at 30-day LIBOR rate plus 10.5% per annum (12/17/19 through 1/27/20; and \$18.02 per diem thereafter)	\$ 756.79

**Subtotal** \$ 27,791,891.91

Costs:

Clerk's Filing Fee, Issuance of Summons and Recording Lis Pendens	\$ 2,144.50
Service of Process	\$ 2,277.00
Title Search Expenses	\$ 450.00
Clerk's Recording Fees (Receiver's First Lien Certificates)	\$ 197.50

**Subtotal** \$ 5,069.00

**TOTAL AS OF JANUARY 27, 2020:** \$ 27,796,960.91

Interest from 1/28/20 through 1/29/20 (date of entry of Final Judgment) which is 2 days x per diem on Amended and Restated Mortgage Note, plus per diem for each Receiver's First Lien Certificate of Indebtedness, in the collective amount of \$13,368.83 per diem. \$ 26,737.66

**TOTAL AS OF ENTRY OF JUDGMENT ON JANUARY 29, 2020:** \$ 27,823,698.27

**4. Amounts Due and Owing as of April 7, 2020.**

Amended Stipulated Final Judgment as of 01/29/20	\$ 27,823.698.27
Post-judgment interest from 01/29/20 through 03/31/20 @ 6.83% per annum (62 days x \$5,192.23)	\$ 321,918.26
Post-judgment interest from 04/01/20 @ 6.66% per annum through 04/07/20 (7 days x \$5,062.99)	\$ 35,440.96
Receiver's First Lien Certificates of Indebtedness:	
Certificate No. 4	
Principal	\$ 708,605.64
Interest at 30-day LIBOR rate plus 10.5% per annum (03/05/20 through 04/07/20; 34 days x \$223.90 per diem)	<u>\$ 7,612.60</u>
<b>TOTAL AMOUNT DUE (AS OF 04/07/20):</b>	<b><u>\$ 28,897,275.73</u></b>

5. **Interest.** The grand total amount referenced in Paragraph 4 shall bear interest from this date forward at the prevailing legal rate of interest. The interest rate will adjust quarterly in accordance with Section 55.03, *Florida Statutes*, until the Judgment is paid in full.

6. **Lien on Property.** Plaintiff holds a lien for the total sum as specified in Paragraph 4 above, that is prior, paramount and superior in dignity to all rights, titles, claims, liens, interest, encumbrances, estates and equity of the Defendants, The Bay Club of Naples, LLC; The Bay Club of Naples II, LLC; The Old Cove Condominium of Naples, Inc.; The Bay Club at Old Naples Condominium Association, Inc.; The Rock Custom Homes, Inc.; Louro Capital Lending, LLC; John Franco, individually; Steven Louro, individually; Evelyn L. Waldron, individually; Frank Meak, individually; and Linda Meak, individually, and all persons, firms, corporations or other entities, claiming by, through, or under the Defendants or any of them upon the mortgaged property herein foreclosed as identified in the Amended and Restated Mortgage, and as described on Exhibit "A" attached hereto and by reference made a part hereof, which Property is situated, lying and being in Collier County, Florida, and any sale of the Property in accordance with Section 45.031, *Florida Statutes*, shall be sold free and clear of any claims or encumbrances of the aforementioned Defendants except as provided in Chapter 718, *Florida Statutes*. The rights of the Old Cove Condominium of Naples, Inc. to collect unpaid assessments from any subsequent title holder, including Plaintiff herein, shall be preserved and shall be governed as provided in Section 718.116, *Florida Statutes*. Final Judgment of Foreclosure is hereby entered against all Defendants on Counts I and II of the Amended Complaint. Plaintiff holds a lien for the total sum superior to all claims or estates of Defendants, on the following described real and personal property located in Collier County, Florida:

**SEE "EXHIBIT A" ATTACHED HERETO  
AND BY REFERENCE MADE A PART HEREOF**

7. **Permits and Other Rights.** Without limitation to the foreclosure of all other rights and all interests of Defendants arising from and pursuant to the Assignment of Contracts, Permits, Licenses, Agreements and Other Rights, dated June 30, 2016, and other Amended and Restated Loan Documents, are hereby foreclosed, including, but not limited to, all contracts, warranties, permits, approvals, development rights, licenses, construction contracts and any amendments or

addendums thereto, between The Bay Club of Naples, LLC and The Bay Club of Naples II, LLC and Envirostruct, LLC; between The Bay Club of Naples, LLC and The Bay Club of Naples II, LLC and Suffolk Construction Company, Inc.; and between The Bay Club of Naples, LLC and The Bay Club of Naples II, LLC and The Rock Custom Homes, Inc., and other collateral as more particularly described therein. All rights in such collateral are deemed assigned to Plaintiff if the successful bidder.

8. **Sale of Property.** If the total sum with interest at the rate prescribed in Paragraph 5 and all costs accrued subsequent to this Judgment are not paid, the clerk of this court shall sell the Property at public sale on a date as provided herein beginning at 11:00 a.m., to the highest bidder for cash, except as prescribed in Paragraph 9, on the third floor of the Courthouse Annex of the Collier County Courthouse, 3315 Tamiami Trail East, Naples, Florida 34112, in accordance with Section 45.031, *Florida Statutes*. A foreclosure sale date is not set at this time due to Executive Order No. 20-94 signed by Governor Ron DeSantis on April 2, 2020, tolling mortgage foreclosures sales due to the COVID-19 pandemic. Executive Order No. 20-94 does not currently limit the tolling to only single- family mortgages. If Executive Order No. 20-94 is subsequently amended or clarified to limit the tolling of foreclosure sales to single-family mortgages or otherwise clarifies that a commercial mortgage foreclosure sale may proceed, Plaintiff may submit a motion to set the sale to this Court. Otherwise, the foreclosure sale date shall be scheduled within 45 days without further hearing after the expiration of the 45-day suspension provided in Executive Order No. 20-94.

9. **Costs.** Plaintiff shall advance all subsequent costs of this action (including expenses of the receivership incurred prior to entry of this final judgment and incurred hereafter) and shall be reimbursed for them by the clerk if Plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for the documentary stamps payable on the certificate of title. If Plaintiff is the purchaser, the clerk shall credit Plaintiff's bid with the total sum with interest and costs accruing and any sums of additional receiver's certificates issued subsequent to this judgment, or such part of it, as is necessary to pay the bid in full.

10. **Developer's or Declarant's Rights.** All of the rights of The Bay Club of Naples, LLC and The Bay Club of Naples II, LLC, as the developer or declarant of The Bay Club at Old Naples, a Condominium, arising from either that certain Declaration of Condominium for The Bay Club at Old Naples, a Condominium, or under Chapter 718, *Florida Statutes*, or any other statutory or common law rights, are hereby foreclosed and such rights or entitlements are assigned to Plaintiff if the successful bidder.

11. **Distribution of Proceeds.** On filing the certificate of title, the clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of Plaintiff's costs; second, documentary stamps affixed to the certificate; third, Plaintiff's attorneys' fees; fourth, the total sum due to Plaintiff, less the items paid, plus interest at the rate prescribed in Paragraph 5 from this date to the date of the sale; and by retaining any remaining amount pending further order of this court.

12. **Right of Redemption/Right of Possession.** On filing the certificate of sale, all Defendants and all persons claiming under or against any Defendants since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property and Defendants' rights of

redemption as prescribed by Section 45.0315, *Florida Statutes*, shall be terminated, except as to claims or rights under chapter 718, or chapter 720, *Florida Statutes*, if any. Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property.

13. **Attorneys' Fees.** This Court reserves jurisdiction to award Plaintiff its reasonable attorneys' fees incurred by Plaintiff. Defendants The Bay Club of Naples, LLC and The Bay Club of Naples II, LLC, jointly and severally (collectively, "Judgment Debtors"), shall be liable to Plaintiff for attorneys' fees incurred by Plaintiff arising from, related to, or in connection with this action, including without limitation its attorneys' fees and costs incurred in determining the amount of a reasonable attorneys' fees to be awarded to Plaintiff.

14. **Fact Information Sheet.** The Bay Club of Naples, LLC and The Bay Club of Naples II, LLC shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the Judgment Creditor's attorney within 45 days from the date of this final judgment, unless the final judgment is satisfied and post-judgment discovery is stayed.

15. **Jurisdiction Retained.** The Court retains jurisdiction of this matter for all purposes including to adjudicate any remaining claims not disposed of by this final judgment of foreclosure including but not limited to enter final judgment against any remaining Defendants and such other and further orders as it deems just, necessary, equitable, and proper under the circumstances, including, without limitation, leave to add additional parties whose interests may be required to be foreclosed, to make necessary corrections to legal descriptions of property to be foreclosed, to enter orders respecting the receiver, the receivership, receivership expenses and issuance of additional receiver's certificates and the receiver's final report, to conduct hearings as are appropriate to tax costs and/or award attorneys' fees and enter orders thereon to be determined and taxed herein, to issue writs of possession, hold valuation hearing as necessary, to include such further costs, interest and reasonable attorneys' fees incurred in establishing such valuation, and other purposes as necessary to complete the foreclosure of the real and personal property, to enter deficiency judgments, and to compel the Judgment Debtors to complete Form 1.977, including all required attachments, and serve it on the Judgment Creditor's attorney. Further, jurisdiction is retained to adjudicate the pending Motion for Rehearing filed by Miles Alpert, individually, and Harry Zea, as Trustee of the Rohar Trust dated July 12, 2001, and to enter final judgment against such Defendants.

16. **Plaintiff's Right to Assign and Credit Bid.** Plaintiff or its assignee shall have the right to assign this Final Judgment of Foreclosure and the right to credit bid at the sale and apply against any bid made the amount awarded to Plaintiff in this Final Judgment of Foreclosure. In the event there is such an assignment, Plaintiff or its assignee shall file a Notice of Assignment of Foreclosure Judgment with the Court that identifies the assignee, and the Clerk of Court shall recognize the assignee as the owner of this Final Judgment of Foreclosure with a right to credit bid the amount awarded herein, without further order of this Court. Plaintiff also shall have the right to assign its successful bid at the foreclosure sale. In the event there is such an assignment, Plaintiff shall file a Notice of Assignment of Successful Bid with the Court that identifies the assignee, and the Clerk of Court shall recognize the assignee as the owner of the successful bid and the party to be named in the Certificate of Title to be issued by the Clerk of the Court, without further order of this Court.

17. **Amended Final Judgment on Count III on Note.** The Stipulated Final Judgment against Defendants The Bay Club of Naples, LLC and The Bay Club of Naples II, LLC, jointly and severally, on Count III of the Amended Complaint for collection on the Amended and Restated Mortgage Note is hereby amended to include the sums set forth in Paragraphs 3 and 4 herein and as otherwise set forth in this Judgment. Plaintiff is entitled to recover from said Defendants the sum as is more particularly set forth in Paragraph 4 above, which shall bear interest at the prevailing legal rate of interest accruing pursuant to Section 55.03, *Florida Statutes*, for all of which sums let execution issue subsequent to the determination by this Court of the valuation of the Property as of the date of the foreclosure sale, which amount shall be credited against the judgment debt due on Count III.

18. **Final Judgment on Count IV on Recourse Guaranty.** The Stipulated Final Judgment was entered against Defendants Myles Alpert, individually, and Harry Zea, as Trustee of the Rohar Trust dated July 12, 2011, jointly and severally, on Count IV of the Amended Complaint for collection on the Recourse Guaranty. Myles Alpert and Harry Zea, as Trustee of the Rohar Trust dated July 12, 2011, have filed a Motion for Rehearing which has not been resolved. If an Order denying the Motion for Rehearing is entered, then the Stipulated Final Judgment against Myles Alpert and Harry Zea, as Trustee of the Rohar Trust dated July 12, 2011, on Count IV shall be amended by this Judgment to include the sums set forth in Paragraphs 3 and 4 and as otherwise set forth in this Judgment, including Paragraph 13. Plaintiff is entitled to recover from said Defendants, jointly and severally, the sum as is more particularly set forth in Paragraph 4 above, which shall bear interest at the prevailing legal rate of interest accruing pursuant to Section 55.03, *Florida Statutes*, for all of which sums let execution issue subsequent to the determination by this Court of the valuation of the Property as of the date of the foreclosure sale, which amount shall be credited against the judgment debt due on Count IV.

**IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT.**

**IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.**

### **EXHIBIT "A"**

#### **PARCEL 1:**

Unit 6-C, of The Old Cove, a Condominium according to the Declaration of Condominium thereof, recorded in Official Records Book 461, Page(s) 832, of the Public Records of Collier County, Florida, and any amendments thereto, together with its undivided share in the common elements.

#### **PARCEL 2:**

Units 7C-1, 7C-2, 7C-3, 7C-4, 8C-1, 8C-2, 8C-3, 8C-4, 8C-5, 8C-A, and 8C-B of the Office at the Cove, being a subdivision of Units 7C and 8C, The Old Cove, a Condominium according to the Declaration of Condominium thereof, recorded in Official Records book 461, Page(s) 832, as amended in Official Records Book 650, Page 409 (Unit re-structure) and amended and restated in Official Records Book 5030, Page 1875, and all subsequent amendments thereto recorded in the Public Records of Collier County, Florida, together with its undivided share in the common elements.

The above is a/k/a all of Declaration of Condominium for The Bay Club at Old Naples, a Condominium, according to the Declaration of Condominium thereof, recorded in Official Records Book 5569, page 1406, of the public records of Collier County, Florida, and any amendments thereto.

Parcel 1 and Parcel 2 are collectively the "Land" or "Real Estate."

#### **TOGETHER WITH:**

Improvements. All structures, buildings and improvements, including additions, enlargements, extensions, modifications, repairs, and replacements, of every kind and description now or any time hereafter located or placed on the Land ("Improvements"),

Fixtures. All fixtures now or hereafter attached to the Land or Improvements, including all plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all other engines, boilers, dynamos, elevators and tanks ("Fixtures"),

Other Property Rights. All other rights and interests on, under, above or related to the Land and/or Improvements and/or Fixtures, including all appurtenances, easements, rights-of-way or uses, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, and all water, ditch, well, reservoir and drainage rights, mineral rights, air rights and development rights, and all land lying in the bed of any street, road or avenue, in front of or adjoining the Land to the center thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto and all minerals, crops, timber, trees, shrubs, flowers, and landscaping features now or hereafter located on, under or above the Land (“Other Property Rights”),

Real Property Rights. Whether at law or in equity, in possession or in expectancy, all estates, rights, titles, interests, franchises, privileges, licenses, liberties, servitudes, tenements, hereditaments and appurtenances, reversions and remainders, rents, issues, profits and revenue in any way belonging, relating or appertaining to the Land and/or Improvements and/or Fixtures, and/or Other Property Rights or any part thereof (“Real Property Rights”),

Personal Property. All furniture, furnishings, goods, equipment, inventory or personal property now or at any time located on, attached to or used in and about the Improvements, or in connection with activity conducted at the Real Estate, including all machines, engines, boilers, dynamos, elevators, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all building materials and equipment hereafter situated on or about the Real Estate or Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefore (“Personal Property”),

Permits and Approvals. All water taps, sewer taps, certificates of occupancy, permits, governmental approvals, licenses, authorizations, variances, franchises, certificates, consents, approvals and other permits, rights and privileges (“Permits”) now or hereafter obtained in connection with the Real Estate or the Improvements,

Leases and Rents. All leases (including, without limitation, oil, gas and mineral leases), licenses, concessions and occupancy agreements and all agreements of every kind relating to the use, enjoyment or occupancy of all or any part of the Real Estate, whether written or oral, now or hereafter entered into whether before or after the filing by or against Mortgagor of any petition for relief under the United States Bankruptcy Code, 11 USC Section 101 et seq. with any tenant, lessee, licensee or other party (each, a “Tenant” and collectively, “Tenants”), all as amended or modified from time to time (each, a “Lease” and collectively, “Leases”) and all rents, royalties, issues, deposits, profits, revenue, income and other benefits of the assets specified in this definition of “Property”, including all amounts payable and all rights and benefits accruing to Mortgagor under the Leases (collectively, “Rents”) and all guarantees of, letters of credit covering, and cash or securities deposited to secure, performance by the Tenants of their obligations under any such Leases, whether said letters of credit, cash or securities are to be held until the expiration of the term of said Leases or applied to one or more of the installments of Rent coming due prior to the expiration of said term (“Tenant Security”),

Reserves. All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Mortgagee or any Lender pursuant to this Mortgage or any other of the Mortgage Documents ("Reserves"),

Property Agreements. All contracts and agreements entered into covering or related to the use, operation or management of any or all of the Real Estate and all revenue, income and other benefits thereof, including, all track agreements, easement agreements, access agreements, developer's or utility agreements, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases, and contracts or documents relating to construction on any part of the Real Estate (including plans, drawings, surveys, tests, reports, bonds and Governmental Approvals) ("Property Agreements"),

Utility Deposits. All monetary deposits given to any public or private utility with respect to utility services furnished to all or any part of the Real Estate,

General Intangibles. All funds, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles (including, without limitation, trademarks, trade names, service marks and symbols now or hereafter used in connection with any part of the Real Estate, all names by which the Real Estate may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Mortgagor has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter arising from or by virtue of any transactions related to the Real Estate,

Building Materials and Plans. All building materials, supplies and equipment placed in or on the Real Estate and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Real Estate,

Insurance. All right, title and interest of Mortgagor in any insurance policies or binders now or hereafter relating to the Property including any unearned premiums thereon and Mortgagor's interest in and to all proceeds of any such insurance policies (including title insurance policies) including the right to collect and receive such proceeds,

Condemnation. All right, title and interest of Mortgagor in and to any and all awards, damages, payment or other compensation, and any and all claims therefore and rights thereto, which may result from taking or injury by virtue of the exercise of the power of condemnation or eminent domain to the Land, Improvements, Fixtures, Personal Property or any other asset specified in this definition of Property,

Books and Records. All books and records relating to or used in connection with the operation of the Real Estate or any part thereof or any other asset specified in this definition of "Property" ("Books and Records"),

Bonds. All right, title and interest of Mortgagor under completion bonds, performance bonds, payment bonds and other similar bonds and surety agreements and arrangements and related to the Property or any party thereof,



Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction of taxes ("Tax Refund"),

Causes of Action. All causes of action and claims, including all causes of action or claims arising in tort, by contract, by fraud or by concealment of material fact, against any person or entity for damages or injury to the Property or in connection with any transactions financed in whole or in part with proceeds of the Notes,

Rights. The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Real Estate and to commence any action or proceeding to protect the interest of Mortgagee or any Lender in the Real Estate,

Additions and Proceeds. All additions, accessions, replacements, substitutions, proceeds and products of the real and personal property, tangible and intangible, described above, and

Other Rights. All other or greater rights and interests of every nature in the Real Estate and in the possession or use thereof and income there from,

together with all items purchased with the proceeds of the Amended and Restated Loan Documents but which are not currently located on the premises of the Mortgaged Property.



eSigned by Krier, Elizabeth V in 11-2018-CA-003571-0001-XX 05/31/2020 18:26:11 eB.gbc84

Electronic Service List

Alice R Huneycutt <ahuneycutt@stearnsweaver.com>, <mkish@stearnsweaver.com>  
John N. Muratides <jmuratides@stearnsweaver.com>, <lwade@stearnsweaver.com>  
Soneet Kapila <SKapila@kapilamukamal.com>  
Alison Zea <alison.zea@gmail.com>  
TAYLOR FAGAN <taylor@mensrightslawfirm.com>  
Alice R Huneycutt <ahuneycutt@stearnsweaver.com>, <mkish@stearnsweaver.com>, <mkish@stearnsweaver.com>  
John N. Muratides <jmuratides@stearnsweaver.com>, <lwade@stearnsweaver.com>, <lwade@stearnsweaver.com>  
Daniel P. Fraser <danfraser@holmesfraser.com>, <service@holmesfraser.com>, <service@holmesfraser.com>  
Donald Grayson Peterson <DonPeterson@NaplesLaw.us>, <Service@NaplesLaw.us>, <Service@NaplesLaw.us>  
Eric David Jacobs <ejacobs@gjb-law.com>, <btraina@gjb-law.com>, <btraina@gjb-law.com>  
Harry M Zea <harry.zea@gmail.com>  
Ian T. Holmes <iholmes@holmesfraser.com>, <service@holmesfraser.com>, <service@holmesfraser.com>

Jason Allen Shepelrich <jshepelrich@holmesfraser.com>, <service@holmesfraser.com>, <service@holmesfraser.com>  
 John N Muratides <jmuratides@stearnsweaver.com>, <lwade@stearnsweaver.com>, <lwade@stearnsweaver.com>  
 Joshua A. Hajek <joshua.hajek@dentons.com>, <stephanie.sheldon@dentons.com>, <stephanie.sheldon@dentons.com>  
 Mariaelena Gayo-Guitian <mguitian@gjb-law.com>, <cesser@gjb-law.com>, <cesser@gjb-law.com>  
 Mark D. Hildreth <mhildreth@shumaker.com>, <skerrigan@shumaker.com>, <skerrigan@shumaker.com>  
 Paul J. Battista <pbattista@gjb-law.com>, <jwilson@gjb-law.com>, <jwilson@gjb-law.com>  
 Joshua Allan Hajek <Jhajek@Cohenlaw.Com>  
 Joshua Hajek <jhajek@cohenlaw.com>  
 Yasser Lakhlifi <YasserLakhlifi@NaplesLaw.us>, <Service@NaplesLaw.us>, <Service@NaplesLaw.us>  
 Daniel P. Fraser <danfraser@holmesfraser.com>, <service@holmesfraser.com>  
 Donald Grayson Peterson <DonPeterson@NaplesLaw.us>, <Service@NaplesLaw.us>, <StacyCollins@NaplesLaw.us>  
 Eric David Jacobs <ejacobs@gjb-law.com>, <btraina@gjb-law.com>, <mrodriguez-salva@gjb-law.com>  
 Ian T. Holmes <iholmes@holmesfraser.com>, <service@holmesfraser.com>  
 Jason Allen Shepelrich <jshepelrich@holmesfraser.com>, <service@holmesfraser.com>  
 John N Muratides <jmuratides@stearnsweaver.com>, <lwade@stearnsweaver.com>  
 Joshua A. Hajek <joshua.hajek@dentons.com>, <stephanie.sheldon@dentons.com>  
 Mariaelena Gayo-Guitian <mguitian@gjb-law.com>, <cesser@gjb-law.com>, <chopkins@gjb-law.com>  
 Mark D. Hildreth <mhildreth@shumaker.com>, <skerrigan@shumaker.com>  
 Paul J. Battista <pbattista@gjb-law.com>, <jwilson@gjb-law.com>, <chopkins@gjb-law.com>  
 Yasser Lakhlifi <YasserLakhlifi@NaplesLaw.us>, <Service@NaplesLaw.us>, <StacyCollins@NaplesLaw.us>

IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA  
CIVIL DIVISION

ACRES CAPITAL, LLC, a New York limited  
liability company as Administrative Agent,

Plaintiff,

v.

Case No.: 2018-CA-003571

THE BAY CLUB OF NAPLES, LLC, a Florida  
limited liability company; THE BAY CLUB OF  
NAPLES II, LLC, a Florida limited liability  
company; MYLES ALPERT, individually;  
HARRY ZEA, as Trustee of the Rohar Trust  
dated July 12, 2011; THE OLD COVE  
CONDOMINIUM OF NAPLES, INC., a  
Florida not-for-profit corporation;  
THE BAY CLUB AT OLD NAPLES  
CONDOMINIUM ASSOCIATION, INC.,  
a Florida not-for-profit corporation,  
PINNACLE PROJECT MANAGEMENT, INC.,  
a Florida corporation; THE ROCK CUSTOM  
HOMES, INC., a Florida corporation;  
LOURO CAPITAL LENDING LLC,  
a New York limited liability company; JOHN  
FRANCO, individually; STEVEN LOURO,  
individually, et al.,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION FOR REHEARING AND/OR  
RECONSIDERATION OF ENTRY OF APRIL 7, 2020 FINAL JUDGMENT OF  
FORECLOSURE ON COUNTS I AND II AS TO ALL DEFENDANTS AND AMENDED  
STIPULATED FINAL JUDGMENT OF MORTGAGE FORECLOSURE,  
DAMAGES ON NOTE AND GUARANTY**

This matter having come before this Court on Defendants' Motion for Rehearing and/or  
Reconsideration of Entry of the April 7, 2020 Final Judgment of Foreclosure on Counts I and II  
as to All Defendants and Amended Stipulated Final Judgment of Mortgage Foreclosure,  
Damages on Note and Guaranty (Docket No. 237) ("Motion"), the Court having considered the

Motion and Plaintiff, ACRES Capital, LLC's Response in Opposition to Defendants' Motion for Rehearing and/or Reconsideration of Entry of April 7, 2020 Final Judgment of Foreclosure on Counts I and II as to All Defendants and Amended Stipulated Final Judgment of Mortgage Foreclosure, Damages on Note and Guaranty, filed on May 29, 2020, the record and being otherwise fully advised, it is

ORDERED AND ADJUDGED that:

1. The Defendant's Motion is DENIED. This Court properly entered the partial final summary judgment against The Bay Club of Naples, LLC and The Bay Club of Naples II, LLC (Counts I, II and III) and the junior lienor defendants (Counts I and II) and the judicial labor as to those parties in this litigation is completed. Further this Court properly entered partial final summary judgment on the claims asserted in Counts I, II and III, which claims are separate and distinct from the claims asserted in Count IV against the guarantors, Harry Zea, as Trustee of the Rohar Trust dated July 12, 2011 and Myles Alpert.

2. The unauthorized filing by Yarnell & Peterson, P.A. of the Motion for Rehearing of Entry of Final Judgment (Docket Nos. 173-176) on behalf of The Bay Club of Naples, LLC and The Bay Club of Naples II, LLC is null and void as to The Bay Club of Naples, LLC and The Bay Club of Naples II, LLC, and does not toll the finality of the Stipulated Final Judgment of Mortgage Foreclosure, Damages on Note and Guaranty (Docket No. 158) and the Final Judgment of Foreclosure on Counts I and II as to All Defendants and Amended Stipulated Final Judgment of Mortgage Foreclosure, Damages on Note and Guaranty (Docket No. 232) as to The Bay Club of Naples, LLC and The Bay Club of Naples II, LLC;

3. The Court hereby determines that Yarnell & Peterson, P.A., which firm does not represent The Bay Club of Naples, LLC or The Bay Club of Naples II, LLC, cannot seek relief

on behalf of The Bay Club of Naples, LLC and The Bay Club of Naples II, LLC. Further, Harry Zea, as Trustee of the Rohar Trust dated July 12, 2011 and Myles Alpert have no standing to challenge the status of finality of the April 7, 2020 Final Judgment of Foreclosure on Counts I and II as to All Defendants and Amended Stipulated Final Judgment of Mortgage Foreclosure, Damages on Note and Guaranty as to any of the defendants affected by the April 7, 2020 Final Judgment of Foreclosure on Counts I and II as to All Defendants and Amended Stipulated Final Judgment of Mortgage Foreclosure, Damages on Note and Guaranty;

4. Simultaneous with the entry of this Order, this Court has entered the Amended Final Judgment of Foreclosure on Counts I and II as to All Defendants and Amended Stipulated Final Judgment of Mortgage Foreclosure, Damages on Note and Guaranty to correct paragraph 13 of the original April 7, 2020 Final Judgment of Foreclosure on Counts I and II as to All Defendants and Amended Stipulated Final Judgment of Mortgage Foreclosure, Damages on Note and Guaranty as requested by the Motion. Therefore, that portion of the Motion related to the error in paragraph 13 is deemed MOOT.



eSigned by Krier, Elizabeth V in 11-2018-CA-003571-0001-JX 08/01/2020 15:25:31 rdiBenCP

Electronic Service List

Alice R Huneycutt <ahuneycutt@stearnsweaver.com>, <mkish@stearnsweaver.com>

John N. Muratides <jmuratides@stearnsweaver.com>, <lwade@stearnsweaver.com>

Soneet Kapila <SKapila@kapilamukamal.com>

Alison Zea <alison.zea@gmail.com>

Ann Herrington <aherrington@ca.cjis20.org>

TAYLOR FAGAN <taylor@mensrightslawfirm.com>

Collier Efile Account <mlake@ca.cjis20.org>

Alice R Huneycutt <ahuneycutt@stearnsweaver.com>, <mkish@stearnsweaver.com>, <mkish@stearnsweaver.com>

John N. Muratides <jmuratides@stearnsweaver.com>, <lwade@stearnsweaver.com>, <lwade@stearnsweaver.com>

Daniel P. Fraser <danfraser@holmesfraser.com>, <service@holmesfraser.com>, <service@holmesfraser.com>  
 Donald Grayson Peterson <DonPeterson@NaplesLaw.us>, <Service@NaplesLaw.us>, <Service@NaplesLaw.us>  
 Eric David Jacobs <ejacobs@gjb-law.com>, <btraina@gjb-law.com>, <btraina@gjb-law.com>  
 Harry M Zea <harry.zea@gmail.com>  
 Ian T. Holmes <iholmes@holmesfraser.com>, <service@holmesfraser.com>, <service@holmesfraser.com>  
 Jason Allen Shepelrich <jshepelrich@holmesfraser.com>, <service@holmesfraser.com>, <service@holmesfraser.com>  
 John N Muratides <jmuratides@stearnsweaver.com>, <lwade@stearnsweaver.com>, <lwade@stearnsweaver.com>  
 Joshua A. Hajek <joshua.hajek@dentons.com>, <stephanie.sheldon@dentons.com>, <stephanie.sheldon@dentons.com>  
 Mariaelena Gayo-Guitian <mguitian@gjb-law.com>, <cesser@gjb-law.com>, <cesser@gjb-law.com>  
 Mark D. Hildreth <mhildreth@shumaker.com>, <skerrigan@shumaker.com>, <skerrigan@shumaker.com>  
 Paul J. Battista <pbattista@gjb-law.com>, <jwilson@gjb-law.com>, <jwilson@gjb-law.com>  
 Joshua Allan Hajek <Jhajek@Cohenlaw.Com>  
 Joshua Hajek <jhajek@cohenlaw.com>  
 Yasser Lakhlifi <YasserLakhlifi@NaplesLaw.us>, <Service@NaplesLaw.us>, <Service@NaplesLaw.us>  
 Daniel P. Fraser <danfraser@holmesfraser.com>, <service@holmesfraser.com>  
 Donald Grayson Peterson <DonPeterson@NaplesLaw.us>, <Service@NaplesLaw.us>, <StacyCollins@NaplesLaw.us>  
 Eric David Jacobs <ejacobs@gjb-law.com>, <btraina@gjb-law.com>, <mrodriguez-salva@gjb-law.com>  
 Ian T. Holmes <iholmes@holmesfraser.com>, <service@holmesfraser.com>  
 Jason Allen Shepelrich <jshepelrich@holmesfraser.com>, <service@holmesfraser.com>  
 John N Muratides <jmuratides@stearnsweaver.com>, <lwade@stearnsweaver.com>  
 Joshua A. Hajek <joshua.hajek@dentons.com>, <stephanie.sheldon@dentons.com>  
 Mariaelena Gayo-Guitian <mguitian@gjb-law.com>, <cesser@gjb-law.com>, <chopkins@gjb-law.com>  
 Mark D. Hildreth <mhildreth@shumaker.com>, <skerrigan@shumaker.com>  
 Paul J. Battista <pbattista@gjb-law.com>, <jwilson@gjb-law.com>, <chopkins@gjb-law.com>  
 Yasser Lakhlifi <YasserLakhlifi@NaplesLaw.us>, <Service@NaplesLaw.us>, <StacyCollins@NaplesLaw.us>